

(Additional counsel on following page)

JESSICA R. PERRY (SBN 209321)  
jerry@orrick.com  
MELINDA S. RIECHERT (SBN 65504)  
mriechert@orrick.com  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
1000 Marsh Road  
Menlo Park, CA 94025-1015  
Telephone: +1 650 614 7400  
Facsimile: +1 650 614 7401

KATHRYN G. MANTOAN (SBN 239649)  
[kmantoan@orrick.com](mailto:kmantoan@orrick.com)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2669  
Telephone: +1 415 773 5700  
Facsimile: +1 415 773 5759

Attorneys for Defendant  
Apple Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

**Plaintiff,**

v.

APPLE INC.

**Defendant.**

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S NOTICE  
OF MOTION AND MOTION TO  
DISMISS PORTIONS OF PLAINTIFF'S  
FOURTH AMENDED COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Dept: Courtroom 5, 17th Floor  
Judge: Honorable Edward M. Chen  
Date: August 22, 2024  
Time: 1:30 p.m.

1 KATE E. JUVINALL (SBN 315659)  
kjuvinall@orrick.com  
2 ORRICK, HERRINGTON & SUTCLIFFE LLP  
631 Wilshire Blvd., Suite 2-C  
3 Santa Monica, CA 90401  
Telephone: +1 310 633 2800  
4 Facsimile: +1 310 633 2849  
5 RYAN D. BOOMS (SBN 329430)  
rbooms@orrick.com  
6 ORRICK, HERRINGTON & SUTCLIFFE LLP  
2100 Pennsylvania Avenue NW  
7 Washington, D.C. 20037  
Telephone: +1 202 339 8400  
8 Facsimile: +1 202 339 8500  
9 Attorneys for Defendant  
Apple Inc.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## TABLE OF CONTENTS

	Page No.
I. INTRODUCTION/STATEMENT OF ISSUES .....	1
II. SUMMARY OF PLAINTIFF'S ALLEGATIONS.....	4
III. ARGUMENT .....	5
A. AMENDMENTS NOT AUTHORIZED BY THE MAY 20 ORDER SHOULD BE DISMISSED. ....	5
B. ALL CLAIMS UNTETHERED TO PLAINTIFF'S EMPLOYMENT SHOULD BE DISMISSED. ....	6
1. NINTH CLAIM: THE UCL CLAIM SHOULD BE DISMISSED. ....	6
2. TENTH & THIRTEENTH CLAIMS: PLAINTIFF'S MULTIPLE IIED CLAIMS FAIL.....	11
3. ELEVENTH CLAIM: PLAINTIFF'S NUISANCE CLAIM IS TIME BARRED.....	14
4. TWELFTH CLAIM: PLAINTIFF'S ULTRAHAZARDOUS CLAIM IS TIME BARRED AND FAILS TO ALLEGE ULTRAHAZARDOUS ACTIVITY UNDER THE LAW. ....	17
C. SEVERAL OF PLAINTIFF'S TERMINATION-RELATED CLAIMS ALSO FAIL TO STATE A CLAIM.....	19
1. SECOND CLAIM: PLAINTIFF'S 1102.5 CLAIM SHOULD BE DISMISSED IN PART. ....	19
2. FOURTH CLAIM: THE HSITA CLAIM SHOULD BE DISMISSED BECAUSE THE ALLEGED COMPLAINTS DO NOT CONCERN "HAZARDOUS SUBSTANCES." .....	21
3. FIFTH CLAIM: THE LABOR CODE SECTION 98.6 CLAIM FAILS TO THE EXTENT THAT IT SEEKS CIVIL PENALTIES. ....	21
4. SIXTH CLAIM: THE LABOR CODE SECTION 232, 232.5, 1101, AND 1102 CLAIMS FAIL IN PART, TO THE EXTENT PREMISED ON ALLEGED STATEMENTS REGARDING PALESTINIANS, MUSLIMS, AND UYGHURS AND ALLEGED DISCLOSURES OF WAGES. ....	22
5. SEVENTH CLAIM: THE SECTION 96(K) CLAIM FAILS BECAUSE THERE IS NO PRIVATE RIGHT OF ACTION.....	23
6. EIGHTH CLAIM: THE BREACH OF IMPLIED COVENANT CLAIM SHOULD BE DISMISSED BECAUSE PLAINTIFF DOES NOT IDENTIFY THE CONTRACT OR PLEAD A TERM APPLE ALLEGEDLY BREACHED. ....	24
IV. CONCLUSION .....	25

**TABLE OF AUTHORITIES**

	Page(s)
<b>Cases</b>	
<i>In re Apple iPhone Antitrust Litig.</i> , 846 F.3d 313 (9th Cir. 2017).....	15
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	11, 15
<i>Bain v. Town of Hempstead</i> , WL 413552 (E.D.N.Y. Feb. 5, 2021), aff'd sub nom. <i>T.B. by Bain v. Town of Hempstead Animal Shelter</i> , 2022 WL 728826 (2d Cir. Mar. 11, 2022) .....	12
<i>Beaver v. Tarsadia Hotels</i> , 816 F.3d 1170 (9th Cir. 2016).....	8
<i>Bell v. St. Clair</i> , 2015 WL 1606968 (E.D. Cal. Apr. 9, 2015).....	8
<i>Benson v. Kwikset Corp.</i> , 152 Cal. App. 4th 1254 (2007), as modified on denial of reh'g (July 26, 2007).....	7
<i>Benton v. Baker Hughes</i> , 2013 WL 3353636 (C. D. Cal. June 30, 2013) .....	5, 6
<i>Bernson v. Browning-Ferris Indus.</i> , 7 Cal.4th 926 (1994) .....	17
<i>Bhinder v. Bank of Am., N.A.</i> , 2013 WL 4010583 (E.D. Cal. Aug. 5, 2013) .....	14, 16
<i>Bondarenko v. Wells Fargo Bank, N.A.</i> , 2016 WL 1622410 (C.D. Cal. Apr. 18, 2016) .....	7
<i>Bontrager v. Showmark Media LLC</i> , 2014 WL 12600201 (C.D. Cal. June 20, 2014) .....	7
<i>Brahmana v. Lembo</i> , 2010 WL 965296 (N.D. Cal. Mar. 17, 2010) .....	23
<i>Camsi IV v. Hunter Tech. Corp.</i> , 230 Cal. App. 3d 1525 (1991), reh'g denied and opinion modified (July 2, 1991) .....	14
<i>Circle Click Media LLC v. Regus Mgmt. Grp. LLC</i> , 2016 WL 3879028 (N.D. Cal. July 18, 2016), aff'd, 743 F. App'x 883 (9th Cir. 2018) .....	10

1	<i>Coal. for Reasonable Regul. of Naturally Occurring Substances v. Cal. Air Res.</i>	
2	<i>Bd.</i> ,	
2	122 Cal. App. 4th 1249 (2004), as modified on denial of reh'g (Oct. 29, 2004).....	18
3	<i>Coppola v. Smith</i> ,	
4	19 F. Supp. 3d 960 (E.D. Cal. 2014).....	5
5	<i>De Souza v. Dawson Tech., Inc.</i> ,	
6	2022 WL 298368 (S.D. Cal. Feb. 1, 2022) .....	19
7	<i>Doe One v. CVS Pharmacy, Inc.</i> ,	
7	2022 WL 3139516 (N.D. Cal. Aug. 5, 2022).....	15
8	<i>Doe One v. CVS Pharmacy, Inc.</i> ,	
9	2024 WL 1707229 (N.D. Cal. Apr. 18, 2024) .....	9
10	<i>Dowell v. Contra Costa Cnty.</i> ,	
11	928 F. Supp. 2d 1137 (N.D. Cal. 2013) .....	23
12	<i>Echlin v. PeaceHealth</i> ,	
12	887 F.3d 967 (9th Cir. 2018).....	25
13	<i>Fenters v. Yosemite Chevron</i> ,	
14	2009 WL 4928362 (E.D. Cal. Dec. 14, 2009).....	20
15	<i>Ferrington v. McAfee, Inc.</i> ,	
16	2010 WL 3910169 (N.D. Cal. Oct. 5, 2010).....	9
17	<i>Fleeman v. Cnty. of Kern</i> ,	
17	2021 WL 663764 (E.D. Cal. Feb. 19, 2021).....	24
18	<i>Fox v. Ethicon Endo-Surgery, Inc.</i> ,	
19	35 Cal.4th 797 (2005) .....	14
20	<i>People ex rel. Garcia-Brower v. Kolla's, Inc.</i> ,	
21	14 Cal. 5th 719 (2023) .....	22
22	<i>Garza v. BNSF R. Co.</i> ,	
22	2012 WL 2118179 (E.D. Cal. June 11, 2012).....	11
23	<i>Greenfield MHP Assocs., L.P. v. Ametek, Inc.</i> ,	
24	145 F. Supp. 3d 1000 (S.D. Cal. 2015) .....	16, 17
25	<i>Grinzi v. San Diego Hospice Corp.</i> ,	
25	120 Cal. App. 4th 72 (2004).....	23
26	<i>Guz v. Bechtel Nat'l. Inc.</i> ,	
27	24 Cal.4th 317 (2000) .....	24
28		

1	<i>Howe v. Target Corp.</i> , 2020 WL 5630273 (S.D. Cal. Sept. 21, 2020) .....	24
2		
3	<i>Huynh v. Quora, Inc.</i> , 508 F. Supp. 3d 633 (N.D. Cal. 2020) .....	8
4		
5	<i>Jackson v. Mesa Cnty. Coll.</i> , 2022 WL 17717402 (9th Cir. Dec. 15, 2022) .....	25
6		
7	<i>James v. PC Matic, Inc.</i> , 2023 WL 4291668 (C.D. Cal. May 17, 2023) .....	19
8		
9	<i>Jolly v. Eli Lilly &amp; Co.</i> , 44 Cal.3d 1103 (1988) .....	13, 15, 17
10		
11	<i>King v. City &amp; Cnty. of San Francisco</i> , 2022 WL 4629448 (N.D. Cal. Sept. 30, 2022) .....	6, 22
12		
13	<i>King v. Facebook, Inc.</i> , 572 F. Supp. 3d 776 (N.D. Cal. 2021) .....	11
14		
15	<i>La v. San Mateo Cnty. Transit Dist.</i> , 2014 WL 4632224 (N.D. Cal. Sept. 16, 2014) .....	19
16		
17	<i>Lopez v. Wachovia Mortg.</i> , 2009 WL 4505919 (E.D. Cal. Nov. 20, 2009) .....	3
18		
19	<i>McKenna v. Permanente Med. Grp., Inc.</i> , 894 F. Supp. 2d 1258 (E.D. Cal. 2012) .....	12
20		
21	<i>Merrick Gables Ass'n, Inc. v. Town of Hempstead</i> , 691 F. Supp. 2d 355 (E.D.N.Y. 2010) .....	19
22		
23	<i>Mickens v. Hous. Auth. of City of Los Angeles</i> , 2023 WL 5155027 (C.D. Cal. July 3, 2023) .....	11
24		
25	<i>Minor v. FedEx Off. &amp; Print Servs., Inc.</i> , 182 F. Supp. 3d 966 (N.D. Cal. 2016) .....	20
26		
27	<i>Morales v. Home Depot U.S.A.</i> , 2006 WL 8455469 (S.D. Cal. July 18, 2006) .....	24
28		
29	<i>Moreyra v. Fresenius Med. Care Holdings, Inc.</i> , 2012 WL 13014985 (C.D. Cal. Mar. 7, 2012) .....	7
30		
31	<i>Muniz v. United Parcel Serv., Inc.</i> , 731 F. Supp. 2d 961 (N.D. Cal. 2010) .....	22
32		
33	<i>Norgart v. Upjohn Co.</i> , 21 Cal.4th 383 (1999) .....	17
34		

1	<i>Park-Kim v. Daikin Indus., Ltd,</i> 2016 WL 5958251 (C.D. Cal. Aug. 3, 2016).....	9
2		
3	<i>Pashman v. Aetna Ins. Co,</i> 2014 WL 3571689 (N.D. Cal. July 18, 2014).....	25
4		
5	<i>Peak v. TigerGraph, Inc.,</i> 2021 WL 4061703 (N.D. Cal. Sept. 7, 2021) .....	25
6		
7	<i>Potter v. Firestone Tire &amp; Rubber Co.,</i> 6 Cal.4th 965 (1993) .....	14
8		
9	<i>Schwartzman, Inc. v. General Elec. Co.,</i> 848 F. Supp. 942 (D.N.M. 1993) .....	19
10		
11	<i>Singelyn v. PNC Bank Nat'l Ass'n,</i> 2024 WL 1601857 (C.D. Cal. Jan. 12, 2024) .....	9
12		
13	<i>SunL Grp. (L.A.), Inc. v. Seaseng, Inc.,</i> 2007 WL 4144992 (C.D. Cal. Sept. 14, 2007).....	7
14		
15	<i>Tamburri v. Suntrust Mortg., Inc.,</i> 2013 WL 4528447 (N.D. Cal. Aug. 26, 2013), <i>aff'd</i> , 623 F. App'x 878 (9th Cir. 2015) .....	7, 8
16		
17	<i>W. Digital Techs., Inc. v. Viasat, Inc.,</i> 2023 WL 7739816 (N.D. Cal. Nov. 15, 2023).....	15
18		
19	<b>Statutes</b>	
20	42 U.S.C. §§6921-25.....	18
21		
22	42 U.S.C. §6928(e) .....	18
23		
24	42 U.S.C. §7412.....	18
25		
26	42 U.S.C. §7413 .....	18
27		
28	42 U.S.C. §11002 .....	18, 19
25	Cal. Bus. & Prof. Code §17203 .....	9
26		
27	Cal. Bus. & Prof. Code §17204 .....	7, 9, 10
28		
	Cal. Bus. & Prof. Code §17208 .....	8
	Cal. Code Civ. Proc. §340(a) .....	20, 21

1	Cal. Code Civ. Proc. §340.8.....	12, 15
2	Cal. Code Civ. Proc. §382.....	9
3	Cal. Code Regs. tit. 8, §339 .....	21
4	Cal. Code Regs. tit. 17, §93000 .....	17
5	Cal. Lab. Code §96(k).....	3, 23, 24
6	Cal. Lab. Code §98.6.....	3, 22, 23
7	Cal. Lab. Code §232.....	3, 5, 22, 23
8	Cal. Lab. Code §232.5.....	3, 5, 22, 23
9	Cal. Lab. Code §1101.....	3, 5, 22, 23
10	Cal. Lab. Code §1102.....	3, 5, 22, 23
11	Cal. Lab. Code §1102.5.....	2, 5, 19, 20, 21
12	Cal. Lab. Code §6362.....	21
13	Cal. Lab. Code §6380.....	21
14	Cal. Lab. Code §6399.7.....	21
15	<b>Other Authorities</b>	
16	Fed. R. Civ. P. 8 .....	2, 11
17	Fed. R. Civ. P. 11 .....	24
18	Fed. R. Civ. P. 12 .....	1, 15
19	Fed. R. Civ. P. 15 .....	5
20	California Civil Jury Instructions No. 455 .....	16
21		
22		
23		
24		
25		
26		
27		
28		

**NOTICE OF MOTION AND MOTION TO DISMISS**

2 TO PLAINTIFF ASHLEY GJOVIK: PLEASE TAKE NOTICE that on August 22, 2024,  
3 at 1:30 p.m. in Courtroom 5, on the 17th Floor of the above-titled Court, located at 450 Golden  
4 Gate Avenue, San Francisco, CA 94102, Defendant Apple Inc. will move the Court for an Order  
5 dismissing the Second Claim (in part), the Fourth Claim, the Fifth Claim (in part), the Sixth Claim  
6 (in part), and the Seventh through Thirteenth Claims of Plaintiff's Fourth Amended Complaint on  
7 the grounds that Plaintiff fails to state a claim upon which relief can be granted under Rule  
8 12(b)(6).<sup>1</sup> This Motion is based on this Notice of Motion, the accompanying Memorandum of  
9 Points and Authorities, the complete pleadings and records on file, and other evidence and  
10 arguments as may be presented at the hearing on this Motion.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION/STATEMENT OF ISSUES

13 As the Court recognized in its May 20, 2024 order regarding Plaintiff’s prior complaint,  
14 “[t]he gist of [Plaintiff’s] suit is that Apple retaliated against her because she complained about  
15 conduct at the company[.]” Dkt. 73 (the “May 20 Order”) at 1. This case should be a straightforward  
16 wrongful termination case, with companion claims for alleged whistleblower retaliation.  
17 Accordingly, Apple is not moving to dismiss any part of Plaintiff’s First or Third Claims, which  
18 allege wrongful termination and whistleblower retaliation under California law.<sup>2</sup>

19 However, Plaintiff’s Fourth Amended Complaint (the “4AC”) continues to muddy the  
20 waters by inadequately pleading numerous claims that are not premised on purported retaliation,  
21 untethered to her employment with Apple, time barred, and/or not legally cognizable. Several of  
22 her retaliation-based claims fail to state a claim and are deficient under Rule 12(b)(6) as well. The  
23 4AC also goes well beyond what this Court authorized in its May 20 Order. There, the Court granted

<sup>25</sup> <sup>26</sup> <sup>1</sup> All references to “Rules” are to the Federal Rules of Civil Procedure unless otherwise noted. The references to claims by number reflect the numbering of claims in the body of the Fourth Amended Complaint, rather than on the caption page (which contains contrary numbering).

<sup>27</sup> For purposes of this Motion only and under the Rules, Apple is required to accept Plaintiff's factual allegations as if they were true, even though they are not, and to seek dismissal of those claims that fail to state a claim *even if* the allegations could be proven. That Apple is not moving to dismiss these claims does not imply that Apple believes they have any merit; they do not.

1 leave to amend particular causes of action on particular bases, and to the extent Plaintiff could  
 2 allege particular additional facts in good faith. Plaintiff has sought to add claims and allegations far  
 3 outside the bounds of this Court's order, without seeking leave. Her eleventh-hour attempt to  
 4 introduce yet further claims and allegations into this litigation should be rejected.

5 Apple moves to dismiss the following claims not tethered to Plaintiff's employment:

6       •     The Ninth Claim under the California Unfair Competition Law ("UCL") should be  
 7 dismissed because Plaintiff was not granted leave to amend to craft an entirely new theory of  
 8 statutory standing, as she has attempted to do, and she nonetheless fails to establish any basis for  
 9 statutory standing, which is dispositive of this claim whether styled as seeking restitutary or  
 10 injunctive relief. Moreover, Plaintiff would not be entitled to restitution because she alleges that  
 11 she lost money to a third party but does not allege that Apple benefited, and would not be entitled  
 12 to an injunction because she lacks Article III standing. Additionally, this claim is time barred.

13       •     The Tenth Claim for intentional infliction of emotional distress should be dismissed  
 14 because much of the alleged conduct is not outrageous as a matter of law and the remaining alleged  
 15 conduct does not meet the Rule 8 pleading standard or was deemed inadequate in the May 20 Order.

16       •     The Eleventh Claim for private nuisance based on the alleged activities of Apple's  
 17 facility at 3250 Scott Boulevard should be dismissed because it is time barred.

18       •     The Twelfth Claim for ultrahazardous activities, also based on the alleged activities  
 19 of Apple's facility at 3250 Scott Boulevard, should be dismissed both because it is time barred and  
 20 because Plaintiff does not allege any ultrahazardous activities as a matter of law.

21       •     The Thirteenth Claim for intentional infliction of emotional distress premised on a  
 22 fear of cancer is time barred, and in any event, Plaintiff does not allege the intent element.

23           In addition, Apple moves to dismiss the following retaliation-based claims which are not  
 24 adequately pled and/or are not legally cognizable:

25       •     The Second Claim under Labor Code section 1102.5<sup>3</sup> should be dismissed in part to  
 26 the extent it is based on alleged complaints about smuggling or sanctions violations because  
 27 Plaintiff was not granted leave to introduce this new theory and, regardless, she does not identify

---

28 <sup>3</sup> All references to the "Labor Code" are to California Labor Code unless otherwise noted.

1 any predicate statute she contends was violated, as is legally required to state a claim. The Second  
 2 Claim should also be dismissed in part to the extent that Plaintiff continues to allege that she  
 3 complained about violations of entire statutory frameworks as opposed to specific statutes.  
 4 Moreover, the Second Claim should be dismissed in part, to the extent it seeks civil penalties and  
 5 is therefore time barred.<sup>4</sup>

6         •         The Fourth Claim under the Hazardous Substances Information and Training Act  
 7 (“HSITA”) should be dismissed because Plaintiff was not granted leave to add it and, in any event,  
 8 her alleged complaints did not concern “hazardous substances” within the meaning of HSITA.

9         •         The Fifth Claim under Labor Code section 98.6 should be dismissed in part to the  
 10 extent it seeks civil penalties and is therefore time barred.

11         •         The Sixth Claim should be dismissed in part to the extent it asserts violations of  
 12 Labor Code sections 232.5, 1101, and 1102 predicated on concerns allegedly raised about  
 13 Palestinian and Muslim rights and an alleged article about working conditions for Uyghurs because  
 14 not only was Plaintiff not granted leave to add this claim, but she also fails to allege a disclosure  
 15 under Section 232.5, she fails to allege a “rule, regulation, or policy” under Section 1101, and she  
 16 fails to allege that Apple threatened to discharge her if she did not adopt a particular course of  
 17 political activity, as is required under Section 1102. Additionally, the Sixth Claim should be  
 18 dismissed in part to the extent it asserts violations of Sections 232 and 232.5 predicated on  
 19 Plaintiff’s alleged disclosure of her wages because Plaintiff does not plausibly allege that Apple  
 20 knew about her alleged disclosure.

21         •         The Seventh Claim under Labor Code section 96(k) fails because there is no private  
 22 right of action under that statute.

23         •         The Eighth Claim for breach of implied covenant should be dismissed to the extent  
 24 that it relies on newly alleged theories Plaintiff did not have leave to introduce. Further, this claim  
 25 should be dismissed because Plaintiff fails to identify any underlying contract or term that would  
 26 support any implied covenant that Apple allegedly breached by terminating Plaintiff.

---

27         <sup>4</sup> Courts can dismiss only a portion of, or one of several theories alleged in, a single claim. See,  
 28 e.g., *Lopez v. Wachovia Mortg.*, 2009 WL 4505919, at \*3-4 (E.D. Cal. Nov. 20, 2009). Alternatively, Apple is separately moving to strike portions of the Second, Fifth, and Sixth Claims.

1       **II. SUMMARY OF PLAINTIFF'S ALLEGATIONS<sup>5</sup>**

2       Plaintiff worked for Apple from February 2015 until Apple terminated her employment in  
 3 September 2021. 4AC ¶8. Apple told her it was terminating her employment because she disclosed  
 4 confidential product-related information and failed to cooperate in an investigation. *See id.* ¶¶132-  
 5 33. Plaintiff contends the termination was in retaliation for raising concerns to government agencies  
 6 and others. *See, e.g., id.* ¶2.

7       Beginning in 2017, Complainant worked at an Apple office located at 825 Stewart Drive in  
 8 Sunnyvale, California (“825 Stewart”). *Id.* ¶47. The office building is located on the TRW  
 9 Microwave Superfund site, which is monitored and overseen by the U.S. Environmental Protection  
 10 Agency (“EPA”) and for which Northrup Grumman—not Apple—is the statutorily defined  
 11 Responsible Party. *See id.* ¶¶47, 49. In March 2021, Apple emailed Plaintiff and other Apple  
 12 employees about an upcoming test for potential vapor intrusion at the office where Plaintiff was  
 13 assigned to work. *Id.* ¶55. In the following months, Plaintiff expressed safety concerns about vapor  
 14 intrusion, both internally and to various government entities, including the EPA. *See, e.g., id.* ¶¶55,  
 15 59. She contends that she came to believe that a fainting spell that she had experienced in the office  
 16 in 2019 was due to vapor intrusion. *See id.* ¶63.

17       Plaintiff further claims that in 2015 Apple began operating a facility at 3250 Scott  
 18 Boulevard in Santa Clara, California (the “Scott building”) that allegedly vented gases near an  
 19 apartment complex where Plaintiff lived in 2020. *Id.* ¶¶26-28. She contends that shortly after she  
 20 moved into the apartment complex she fell ill and went on short-term disability. *Id.* ¶¶31-32. She  
 21 claims that in 2023 she came to believe her illness was due to gases from the Apple facility near  
 22 her former apartment. *See id.* ¶¶4, 149.

---

23  
 24  
 25  
 26       <sup>5</sup> For purposes of this Motion only and as required under the Rules, Apple recites Plaintiff’s factual  
 27 allegations as if they were true, even though they are not. Given the procedural posture of this  
 28 Motion, Apple will not present any additional or contrary facts regarding Plaintiff’s employment,  
 her termination, or her claims in this case; at the appropriate time, Apple will present its defense.  
 Moreover, the Fourth Amended Complaint contains numerous irrelevant allegations, which Apple  
 does not summarize here and is concurrently moving to strike.

1       **III. ARGUMENT**

2       **A. Amendments Not Authorized by the May 20 Order Should Be Dismissed.**

3       A party in federal court is permitted to amend its pleading “once as a matter of course”  
 4       within specified times frames; other amendments are permitted “only with the opposing party’s  
 5       consent or the court’s leave.” Fed. R. Civ. P. 15(a)(1), (2). A “procedural problem” arises where a  
 6       litigant attempts to add new claims or theories that are “outside the scope of the amendment  
 7       permitted by the prior dismissal order.” *Coppola v. Smith*, 19 F. Supp. 3d 960, 971 (E.D. Cal. 2014).  
 8       The appropriate remedy is to strike or dismiss unauthorized new claims. *See Benton v. Baker*  
 9       *Hughes*, 2013 WL 3353636, at \*2-\*3, (C. D. Cal. June 30, 2013) (citing cases).

10       Plaintiff’s 4AC goes well beyond the specific and limited leave the Court afforded in the  
 11      May 20 Order; in fact, despite having had multiple claims dismissed with prejudice (*see* May 20  
 12      Order at 46-47) and having declined to re-plead multiple others (*see* 4AC ¶6), the 4AC still runs 74  
 13      pages (just one page shorter than the Third Amended Complaint). This is in significant part due to  
 14      the fact that Plaintiff has attempted to add new theories and claims absent from the Third Amended  
 15      Complaint and not authorized by the leave granted by the Court on May 20—to wit:

- 16       • New theories in support of her Second Claim under Labor Code section 1102.5,  
 17           untethered to either “the Gobbler application” or “environmental and safety violations”  
 18           (*compare* May 20 Order at 35 *with* 4AC ¶168 at 50:26-28);
- 19       • An entirely new Fourth Claim for alleged whistleblower retaliation under the Hazard  
 20           Substances Information and Training Act (“HSITA”) (4AC ¶¶175-76);
- 21       • A patchworked Sixth Claim comprised of new theories of alleged retaliation under  
 22           Labor Code sections 232 and 232.5 as well new alleged statutory violations under Labor  
 23           Code sections 1101 and 1102 (*id.* ¶¶181, 183-84);
- 24       • New theories for her Eighth Claim for breach of implied covenant (*id.* ¶¶189-91); and
- 25       • A UCL claim now entirely devoted to sweeping allegations that Apple unlawfully  
 26           forced employees to participate in “health, anatomy, and personal data collection  
 27           studies” and dropping the lone theory she was permitted to amend (related to “Apple’s  
 28           establishment of a health care clinic, called AC Wellness, which it then used

1                   improperly”) (*compare* May 20 Order at 45-46 with 4AC ¶¶192-207).

2                   At some point, the pleadings in this matter—which in turn will frame the facts that Plaintiff  
 3 must prove, the defenses Apple may assert, and the appropriate boundaries of discovery—must be  
 4 settled. Plaintiff’s unauthorized attempt to add new claims and theories at this juncture should be  
 5 rejected. *Accord King v. City & Cnty. of San Francisco*, 2022 WL 4629448, at \*2 (N.D. Cal. Sept.  
 6 30, 2022) (“When a district court grants leave to amend for a specified purpose, it does not  
 7 thereafter abuse its discretion by dismissing any portions of the amended complaint that were not  
 8 permitted … This rule applies with equal vigor to pro se plaintiffs.”) (quoting *Raiser v. City of Los  
 9 Angeles*, 2014 WL 794786, at \*4 (C.D. Cal. Feb. 26, 2014)).

10                  **B.        All Claims Untethered to Plaintiff’s Employment Should Be Dismissed.**

11                  **1.        Ninth Claim: The UCL Claim Should Be Dismissed.**

12                  **a.        Plaintiff Was Not Granted Leave to Submit a Wholesale Rewrite  
 13                   of Her UCL Claim.**

14                  Plaintiff had previously attempted to characterize this case as “a Racketeer Influenced and  
 15 Corrupt Organizations (‘RICO’) case” challenging “a complex regulatory-compliance avoidance  
 16 scheme conducted by Apple Inc through a criminal enterprise.” Pl.’s Opp. to Mot. to Dismiss Third  
 17 Am. Compl. (Dkt. 54) at 1-2. The Court disagreed; Plaintiff’s RICO claim was dismissed with  
 18 prejudice in part via the May 20 Order, and Plaintiff elected not to amend following dismissal of  
 19 the rest of the claim with leave despite “serious concern” as to whether any plausible RICO claim  
 20 could be alleged. *See* May 20 Order at 11-19. Plaintiff has since pivoted, attempting to transform  
 21 her wrongful termination case into one about “a course of unlawful conduct and unfair business  
 22 practices” (4AC ¶1)—in other words, to make her UCL claim into a vehicle for similarly sprawling  
 23 claims against Apple untethered to her termination or any alleged antecedent retaliation.

24                  The amendments she proposes to her UCL claim should be rejected as an initial matter  
 25 because they go far beyond what the Court authorized—namely, amendment to “clarify her claim  
 26 based on AC Wellness.” May 20 Order at 46. Her sprawling new allegations about Apple  
 27 “unlawfully coercing employees to provide personal data, including biometrics” are unrelated and  
 28 not authorized. *See Benton*, 2013 WL 3353636, at \*2-\*3. She eliminated any reference whatsoever

1 to “AC Wellness” in this claim, and introduced entirely new allegations and theories about Gobbler  
 2 and other alleges “health, anatomy, and personal data collection studies.” *See 4AC ¶¶196-202.*

3                   **b.        Plaintiff Lacks Statutory Standing to Pursue a UCL Claim.**

4                   Even if the Court were to consider this impermissibly overhauled claim, the claim should  
 5 be dismissed because Plaintiff lacks statutory standing under the UCL to pursue any type of relief,  
 6 whether monetary or injunctive.<sup>6</sup> “Proposition 64 amended [S]ection[] 17204 … to require a private  
 7 plaintiff seeking … *injunctive or restitutive relief* [under the UCL] to establish he or she ‘has  
 8 suffered injury in fact and has lost money or property.’” *Benson v. Kwikset Corp.*, 152 Cal. App.  
 9 4th 1254, 1263 (2007), *as modified on denial of reh’g* (July 26, 2007) (emphasis added). Thus,  
 10 “[w]hether a party seeks only restitution, injunctive relief, or both, that party is still required to  
 11 show lost money or property to establish standing under the UCL.” *Bondarenko v. Wells Fargo  
 12 Bank, N.A.*, 2016 WL 1622410, at \*8 (C.D. Cal. Apr. 18, 2016) (citing *Walker v. Geico General  
 13 Ins. Co.*, 558 F.3d 1025, 1027 (9th Cir. 2009)) (emphasis added).<sup>7</sup> Further, a plaintiff must allege  
 14 she “lost money or property *as a result of* the unfair competition.” Cal. Bus. & Prof. Code § 17204  
 15 (emphasis added). “The phrase ‘as a result of’ imposes a causation requirement; that is, the alleged  
 16 unfair competition must have *caused* the plaintiff to lose money or property.” *Tamburri v. Suntrust  
 17 Mortg., Inc.*, 2013 WL 4528447, at \*8 (N.D. Cal. Aug. 26, 2013), *aff’d*, 623 F. App’x 878 (9th Cir.  
 18 2015). “By definition, a plaintiff does not ‘satisfy the causation prong of the statute if he or she  
 19 would have suffered ‘the same harm whether or not a defendant complied with the law.’” *Id.*  
 20 (quoting *Jenkins v. JPMorgan Chase Bank, N.A.*, 216 Cal. App. 4th 497, 522 (2013)).

21  
 22                   <sup>6</sup> The May 20 Order agreed with Apple that Plaintiff lacked standing to pursue monetary relief  
 23 under the UCL but opined that “Apple does not explain why she would not have standing to pursue  
 24 injunctive relief.” May 20 Order at 45-46. Apple attempts to clarify in this motion that the UCL’s  
 25 statutory standing requirements must be satisfied by every UCL plaintiff regardless of the type of  
 26 relief she seeks; she simply cannot proceed under the UCL if she is not among the limited class of  
 27 persons who have standing under the statute’s terms.

28                   <sup>7</sup> See also *Bontrager v. Showmark Media LLC*, 2014 WL 12600201, at \*6-9 (C.D. Cal. June 20,  
 29 2014) (showing of “lost money or property as a result of [] unfair competition” necessary to  
 30 establish statutory standing to seek injunction under the UCL); *SunL Grp. (L.A.), Inc. v. Seaseng,  
 31 Inc.*, 2007 WL 4144992, at \*4 (C.D. Cal. Sept. 14, 2007) (same); contrast *Moreyra v. Fresenius  
 32 Med. Care Holdings, Inc.*, 2012 WL 13014985, at \*7 (C.D. Cal. Mar. 7, 2012) (statutory standing  
 33 to pursue UCL injunctive relief present where plaintiffs “allege that they have been deprived wages  
 34 and meal premiums as a result of Defendants’ unfair business practices”).

1       Here, Plaintiff alleges that Apple engaged in unfair competition by “coercing employees to  
 2 provide personal data, including biometrics, which Apple can use for research and development.”  
 3 4AC ¶193. But Plaintiff does not allege that she has lost money or property *as a result of* providing  
 4 her personal data. To do so, she would have to allege that she lost money or property *after* she  
 5 provided her personal data, but the lone allegation of any monetary loss is that she allegedly paid  
 6 for Lyft and Uber rides in order to attend “personal data collection studies,” *i.e., before* she provided  
 7 any personal data to Apple. 4AC ¶202. These allegations do not confer standing. *See Tamburri,*  
 8 2013 WL 4528447, at \*8 (“Plaintiff has not paid any fees or charges that she alleges were incurred  
 9 as a result of foreclosure. The foreclosure was initiated only *after* Plaintiff defaulted on her loan.  
 10 Thus, Plaintiff cannot assert that her alleged economic injury was ‘caused by’ Defendants’ acts,  
 11 because the asserted wrongful ‘actions occurred *after* [Plaintiff’s] default on her loan.’”); *Huynh v.*  
 12 *Quora, Inc.*, 508 F. Supp. 3d 633, 661 (N.D. Cal. 2020) (“payments toward enhanced credit  
 13 monitoring that arise from a data breach and that are not reimbursed do ‘constitute economic injury,  
 14 sufficient to confer UCL standing’”). If Plaintiff’s theory were correct, any time a private party  
 15 pays to take a taxi or rideshare to a location where an allegedly “unfair” business practice takes  
 16 place, she could claim UCL statutory standing; this is not the law. Because Plaintiff lacks statutory  
 17 standing under the UCL, she is not a proper plaintiff on any UCL claim and cannot seek any relief  
 18 under that statute (whether that relief be injunctive or monetary).

19                     c.     Plaintiff’s UCL Claim Would Fail for Additional Reasons.

20                     i.     The UCL Claim Is Time Barred.

21       Plaintiff’s UCL claim would be subject to dismissal even if she had statutory standing to  
 22 pursue it because the claim is barred by the four-year statute of limitations. *See Cal. Bus. & Prof.*  
 23 *Code* §17208 (“Any action to enforce any cause of action pursuant to this chapter shall be  
 24 commenced within four years after the cause of action accrued.”). A UCL action accrues “when  
 25 each of the elements of the cause of action (wrongdoing, causation, and harm) has been satisfied.”  
 26 *Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1178 (9th Cir. 2016). Here, Plaintiff previously alleged  
 27 that Apple coerced her to provide personal data in August 2017, nearly seven years before she  
 28 introduced this cause of action in March 2024. *See Second Am. Compl.* (Dkt. 32 to 32-2) ¶¶136-

1 42 (allegations that Plaintiff “was coerced to use the ‘Gobbler’ application” in August 2017); Third  
 2 Am. Compl. (Dkt. 47) ¶¶255-57; 4AC ¶198.<sup>8</sup> Her UCL claim thus is barred.

3                   **ii. Plaintiff Does Not Allege Any Basis for Restitution.**

4 Moreover, Plaintiff does not allege entitlement to either of the remedies the UCL affords.  
 5 “Because California’s Unfair Competition Law ‘is equitable in nature,’ remedies are ‘generally  
 6 limited to injunctive relief and restitution.’” *Doe One v. CVS Pharmacy, Inc.*, 2024 WL 1707229,  
 7 at \*13 (N.D. Cal. Apr. 18, 2024) (quoting *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th  
 8 1134 (2003)). Plaintiff does not allege any entitlement to restitution because, although she alleges  
 9 that she paid money to third parties (Uber and Lyft) (4AC ¶202), she does not allege that Apple  
 10 benefited. “[T]he UCL permits restitution from a defendant whose unfair business practices caused  
 11 plaintiff to pay money to a third party” only if “it is reasonable to infer that the defendant indirectly  
 12 received that money from the third party.” *Ferrington v. McAfee, Inc.*, 2010 WL 3910169, at \*8  
 13 (N.D. Cal. Oct. 5, 2010); *Park-Kim v. Daikin Indus., Ltd.*, 2016 WL 5958251, at \*23 (C.D. Cal.  
 14 Aug. 3, 2016) (no restitution under UCL where “plaintiffs do not … plead that defendants … had  
 15 a relationship with a third party that received money from plaintiffs, such that defendants may have  
 16 benefitted”). Here, Plaintiff does not plead that Apple had a relationship with any ride-share  
 17 company such that Apple would have benefitted from Plaintiff taking ride-shares to the alleged  
 18 studies. Plaintiff thus is not entitled to restitution.<sup>9</sup>

19 Plaintiff also improperly seeks restitution on behalf of others. *See* 4AC ¶204 (“Apple should  
 20 be required to restore these monies to [Plaintiff], her former co-workers, and the public.”). Such  
 21 relief is unwarranted given that Plaintiff has not sought to pursue a class action. *See* Cal. Bus. &  
 22 Prof. Code §17203 (“Any person may pursue representative [UCL] claims or relief on behalf of

---

23                   <sup>8</sup> Plaintiff omitted certain previously pled facts from the 4AC. But the Court may still consider them  
 24 here, as a “[p]laintiff may not plead around the deficiencies in [her] claims by omitting previously  
 25 pled facts.” *Bell v. St. Clair*, 2015 WL 1606968, at \*3 (E.D. Cal. Apr. 9, 2015).

26                   <sup>9</sup> Plaintiff also seeks “disgorgement.” 4AC ¶203-24. “Under California law, there are two forms of  
 27 disgorgement: ‘restitutionary disgorgement, which focuses on the plaintiff’s loss, and  
 28 nonrestitutionary disgorgement, which focuses on the defendant’s unjust enrichment.’” *Doe One v. CVS Pharmacy, Inc.*, 2024 WL 1707229, at \*13 (N.D. Cal. Apr. 18, 2024) (quoting *Chowning v. Kohl’s Dep’t Stores, Inc.*, 735 F. App’x 924, 925 (9th Cir.), amended on denial of reh’g, 733 F. App’x 404 (9th Cir. 2018)). Plaintiff is not entitled to restitutionary disgorgement, as discussed  
*supra*. And “[n]onrestitutionary disgorgement is unavailable in UCL actions.” *Id.*

1 others *only if* the claimant meets the standing requirements of Section 17204 and complies with  
 2 Section 382 of the Code of Civil Procedure” [i.e., the statute governing class actions in California  
 3 state courts]) (emphasis added); *Singelyn v. PNC Bank Nat'l Ass'n*, 2024 WL 1601857, at \*8 (C.D.  
 4 Cal. Jan. 12, 2024) (dismissing UCL claim “to the extent it requests unauthorized remedies, such  
 5 as ... restitution on behalf of a class of consumers when [plaintiff] has not alleged a class action”).

6                             **iii. Plaintiff Lacks Article III Standing as to Injunctive Relief.**

7 Plaintiff would not be entitled to the injunction she seeks because she lacks Article III  
 8 standing. “[S]atisfaction of section 17204’s harm requirements which permits relative broad  
 9 standing in state court ... does not automatically permit a plaintiff to pursue injunctive relief under  
 10 the UCL in *federal court*.” *Circle Click Media LLC v. Regus Mgmt. Grp. LLC*, 2016 WL 3879028,  
 11 at \*3 (N.D. Cal. July 18, 2016), *aff'd*, 743 F. App’x 883 (9th Cir. 2018). “In federal court, Article  
 12 III jurisdiction must obtain[.]” *Id.* Here, Plaintiff has not demonstrated a real or imminent threat of  
 13 an irreparable injury, a requisite for Article III standing. *See id.* at \*4. She requests an order that  
 14 prohibits Apple from (1) “gathering employee biometrics,” (2) “using personal employee data in  
 15 for-profit product development,” (3) “us[ing] ... the Face ‘Gobbler’ application,” and (4) “other  
 16 conduct violating [employees’] rights of privacy.” *See 4AC ¶206.* She also seeks “an order of  
 17 disgorgement of the unlawfully and unethically obtained data.” *See id.* ¶207. But she does not  
 18 explain how any future collection or use of her personal data would cause her harm, much less  
 19 allege any facts to suggest that Apple will collect or use her personal data in the future. Moreover,  
 20 she does not explain how future use of the “Face ‘Gobbler’” application by Apple would cause her  
 21 harm. Without a threat of future injury, Plaintiff lacks the requisite Article III standing to obtain  
 22 her requested injunctive relief.

23 Moreover, the injunctive relief she seeks is far too broad, as she seeks an order with respect  
 24 to all Apple employees. *See 4AC ¶¶206-07.* “[T]he Court cannot issue injunctive relief on behalf  
 25 of others as a matter of state law under the UCL without class certification.” *Circle Click Media*  
*LLC*, 2016 WL 3879028, at \*5. Plaintiff makes no attempt to satisfy the prerequisites for a class  
 26 action; her overly broad request for injunctive relief thus fails for this additional reason.  
 27

28

1           **2. Tenth & Thirteenth Claims: Plaintiff's Multiple IIED Claims Fail.**

2           This Court previously dismissed almost the entirety of Plaintiff's IIED claim, granting her  
 3 leave to amend to correct the identified deficiencies "only if she could do so in good faith." May  
 4 20 Order at 4. Instead, the 4AC now alleges two separate IIED claims—one predicated on alleged  
 5 social media posting and the other "criminal acts" that "Apple" allegedly directed towards her post-  
 6 termination (the Tenth Claim), and one predicated on allegedly causing her a "fear of developing  
 7 cancer" due to chemical exposures at her apartment (the Thirteenth Claim). Neither states a claim.

8           **a. Tenth Claim: Much of the Alleged Conduct Is Not Outrageous,**  
 9 **and the Remaining Alleged Conduct Does Not Satisfy Rule 8 or**  
**Was Deemed Inadequate in the May 20 Order.**

10          To state an IIED claim, Plaintiff must first allege "extreme and outrageous conduct by the  
 11 defendant with the intention of causing, or reckless disregard of the probability of causing,  
 12 emotional distress[.]" *King v. Facebook, Inc.*, 572 F. Supp. 3d 776, 785 (N.D. Cal. 2021) (quoting  
 13 *Carlsen v. Koivumaki*, 227 Cal. App. 4th 879, 896 (2014)). Here, Plaintiff alleges that, after her  
 14 employment was terminated, a handful of Apple employees posted on social media that "Gjovik's  
 15 complaints were bogus, that [she] was a liar and bad actor, and that [she] deserved the harm Apple  
 16 was causing her." 4AC ¶210; *see also id.* ¶¶211-13. Such conduct does not constitute outrageous  
 17 conduct as a matter of law. *See King*, 572 F. Supp. 3d at 785 ("Liability for IIED does not extend  
 18 to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities."); *Yurick v.*  
 19 *Superior Court*, 209 Cal. App. 3d 1116, 1124-25, 1129 (1989) (allegation that supervisor called  
 20 employee a liar in front of coworkers numerous occasions was not outrageous conduct as a matter  
 21 of law).

22          Plaintiff alleges other purportedly outrageous conduct (*see* 4AC ¶¶138, 140, 215-18), but  
 23 these allegations do not satisfy Rule 8, which "demands more than an unadorned, the-defendant-  
 24 unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl.*  
 25 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). For example, Plaintiff alleges that "Apple stalked  
 26 [her]," "surveilled [her]," and "broke into [her] home." 4AC ¶¶215-16. These "'naked assertion[s]'  
 27 devoid of 'further factual enhancement'" are inadequate. *See Ashcroft*, 556 U.S. at 678 (citing  
 28 *Twombly*, 550 U.S. at 557); *see also Mickens v. Hous. Auth. of City of Los Angeles*, 2023 WL

1 5155027, at \*3 (C.D. Cal. July 3, 2023) (no plausible claims where plaintiff alleged that police  
 2 department stalked and surveilled him but failed to articulate specific actions that constituted  
 3 stalking and surveilling). Indeed, such allegations lack the “most basic underlying factual matter”  
 4 necessary to give Apple fair notice of the allegedly outrageous conduct at issue, including who  
 5 allegedly engaged in the conduct (as “Apple” is an entity) and when it occurred. *See Garza v. BNSF*  
 6 *R. Co.*, 2012 WL 2118179, at \*6 (E.D. Cal. June 11, 2012) (dismissing IIED claim where plaintiff  
 7 failed to allege what employees made outrageous statements and when); *McKenna v. Permanente*  
 8 *Med. Grp., Inc.*, 894 F. Supp. 2d 1258, 1274 (E.D. Cal. 2012) (same); *Bain v. Town of Hempstead*,  
 9 2021 WL 413552, at \*11 (E.D.N.Y. Feb. 5, 2021), *aff’d sub nom. T.B. by Bain v. Town of*  
 10 *Hempstead Animal Shelter*, 2022 WL 728826 (2d Cir. Mar. 11, 2022) (no liability for employer  
 11 where plaintiff failed to identify which employee committed wrongdoing).

12 Further, Plaintiff continues to allege Apple “sued her for reporting criminal conduct” and  
 13 “reported her to law enforcement” (4AC ¶218; *see also id.* ¶140), despite the Court’s prior order  
 14 dismissing her IIED claim to the extent premised on such facts. *See* May 20 Order at 43-44. As the  
 15 Plaintiff’s prior allegations make clear, “Apple” has done none of these things. Plaintiff previously  
 16 pled that in 2022 “Joanna Appleseed”—while no longer employed at Apple (Second Am. Compl.  
 17 (Dkt. 32 to 32-2) ¶622)—filed “retaliatory litigation” against Plaintiff (*see id.* ¶¶879, 1451) and an  
 18 FBI report about Plaintiff (*id.* ¶¶590-91). This conduct thus cannot support an IIED claim.

19                   **b. Thirteenth Claim: This IIED Claim Is Time Barred, and**  
 20                   **Plaintiff Does Not Allege Apple Acted Intentionally.**

21 Plaintiff brings a second IIED claim premised on her purported fear of developing cancer  
 22 as a result of alleged exposure to “carcinogenic chemicals” from the Scott building in 2020. 4AC  
 23 ¶¶238-44. This claim is barred by the two-year statute of limitations. *See* Cal. Code Civ. Proc.  
 24 §340.8 (“In any civil action for injury or illness based upon exposure to a hazardous material or  
 25 toxic substance,” the two-year statute of limitations begins to run when “the plaintiff becomes  
 26 aware of, or reasonably should have become aware of, (1) an injury, (2) the physical cause of the  
 27 injury, and (3) sufficient facts to put a reasonable person on inquiry notice that the injury was caused

28

1 or contributed to by the wrongful act of another[.]”).<sup>10</sup>

2 Plaintiff alleges that she became severely ill in February 2020. 4AC ¶31. She further alleges  
 3 that she discovered “elevated levels” of chemicals in her apartment in September 2020 and that  
 4 certain of the chemicals she believes were in her apartment are carcinogenic. *See id.* ¶¶34; 40  
 5 (“Gjovik’s limited testing [in September 2020] returned results … [for] Toluene[.]”); 42 (“Gjovik’s  
 6 medical tests from September 2020 … revealed significant arsenic in her blood with no other  
 7 explanation than Arsine gas exposure[.]”); 242 (Apple “exposed Gjovik to carcinogens, including  
 8 … Toluene, Arsine …”). She further asserts that she concluded in September 2020 that “her medical  
 9 issues at the apartment were due to a chemical emergency.” *Id.* ¶35. She even alleges that she wrote  
 10 and published an article on March 26, 2021 “about her chemical exposure experience with the air  
 11 around [the Scott building]” entitled “I thought I was dying: My apartment was built on toxic waste”  
 12 (*id.* ¶57)—clearly indicating that she suspected as of that date that her alleged injuries had a tortious  
 13 cause. She moved out of this apartment in October 2020. *Id.* ¶8.

14 According to Plaintiff’s allegations, she suspected in September 2020 that her alleged  
 15 illness was caused by exposure to purportedly carcinogenic chemicals; she published an article  
 16 detailing that belief in March 2021. At that time, the statute of limitations began to run. *See Jolly*  
 17 *v. Eli Lilly & Co.*, 44 Cal.3d 1103, 1111 (1988) (“Once the plaintiff has a suspicion of wrongdoing,  
 18 and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long  
 19 as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts  
 20 to find her.”). Plaintiff did not file within two years of September 2020 (or even within two years  
 21 of the date she moved out of the apartment or the date on which she published an article detailing  
 22 her alleged harms); her IIED claim is thus time-barred.

23 Plaintiff appears to contend that she can salvage her untimely claim because the statute of  
 24 limitations allegedly did not begin to run until 2023, when she supposedly discovered her alleged  
 25 injury was purportedly caused by Apple. *See* 4AC ¶¶4, 149. But that attempt to avoid the statute of  
 26 limitations is contrary to the law. *See* May 20 Order at 30-31 (quoting *Bernson v. Browning-Ferris*  
 27

---

28 <sup>10</sup> The May 20 Order noted that “Apple [had] not made a statute-of-limitations argument” as to this aspect of their claim. May 20 Order at 43. The 4AC’s allegations make clear the time bar.

1     *Indus.*, 7 Cal.4th 926, 932 (1994)) (“‘[T]he statute of limitations begins to run when the plaintiff  
 2     suspects or should suspect that her injury was caused by wrongdoing, that someone has done  
 3     something wrong to her.’ Aggrieved parties generally need not know the exact manner in which  
 4     their injuries were ‘effected, nor the identities of all parties who may have played a role therein.”’).

5                  “[U]nder the delayed discovery rule, a cause of action accrues and the statute of limitations  
 6     begins to run when the plaintiff has reason to suspect an injury and some wrongful cause, unless  
 7     the plaintiff pleads and proves that a reasonable investigation at that time would not have revealed  
 8     a factual basis for that particular cause of action.” *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal.4th  
 9     797, 803 (2005). Plaintiff does not plead such facts, and thus she cannot take advantage of the  
 10    delayed discovery rule. *See Camsi IV v. Hunter Tech. Corp.*, 230 Cal. App. 3d 1525, 1537 (1991),  
 11    *reh'g denied and opinion modified* (July 2, 1991) (declining to apply delayed discovery rule on  
 12    demurrer, and reasoning that “[t]he burden was on [plaintiff] to plead *facts* to show *inability* to have  
 13    made earlier discovery,” but the “pleading wholly fail[ed] to show that [plaintiff] would have been  
 14    unable, despite reasonable diligence, to have discovered both the VOC contamination, and that  
 15    [defendant] was responsible for it”); *Bhinder v. Bank of Am., N.A.*, 2013 WL 4010583, at \*2 (E.D.  
 16    Cal. Aug. 5, 2013) (dismissing claim for failure to allege facts showing delayed discovery rule  
 17    applied). Plaintiff does not allege what information she allegedly “discovered” that formed the basis  
 18    for her claim nor does she allege any facts to suggest that she could not have discovered such  
 19    information by September 2021. Thus, the delayed discovery rule does not apply.

20                  Moreover, even if this claim were timely, it fails because Plaintiff alleges no facts to  
 21    demonstrate that any conduct allegedly leading her to develop a fear of cancer was “directed at  
 22    [her] or undertaken with knowledge of [her] presence and [exposure to the chemicals].” *Potter v.*  
 23    *Firestone Tire & Rubber Co.*, 6 Cal.4th 965, 1001 (1993). For example, Plaintiff does not allege  
 24    facts to suggest that Apple knew that the Scott building vented chemicals into her apartment or that  
 25    it was causing her harm in particular. Her second IIED claim premised on a fear of developing  
 26    cancer should be dismissed for this additional reason.

27                 **3. Eleventh Claim: Plaintiff’s Nuisance Claim Is Time Barred.**

28                  Plaintiff’s prior complaint alleged private nuisance and nuisance *per se* as to two separate

1 sites (825 Stewart and 3250 Scott Boulevard); the Court dismissed both nuisance claims related to  
 2 825 Stewart with prejudice and the nuisance *per se* claim related to the Scott building with leave to  
 3 amend. *See* May 20 Order at 47. Plaintiff did not re-plead the nuisance *per se* claim related to the  
 4 Scott building, but this Court’s prior order entails that Plaintiff’s remaining private nuisance claim  
 5 as to that site—which she first asserted in her First Amended Complaint in this action on October  
 6 25, 2023 (*see* Dkt. 17)—is time barred.<sup>11</sup>

7 Plaintiff’s private nuisance claim predicated on alleged activities at the Scott building—  
 8 which she allegedly lived nearby from February 2020 to October 2020 (*see* 4AC ¶8)—is barred by  
 9 the two-year statute of limitations. Cal. Code Civ. Proc. § 340.8. Under Section 340.8, the statute  
 10 of limitations is two years “[i]n **any civil action** for injury or illness based upon exposure to a  
 11 hazardous material or toxic substance” (emphasis added). Relying on Section 340.8, the Court held  
 12 that “[g]iven that Ms. Gjovik filed suit on September 7, 2023, any claim that accrued before  
 13 September 7, 2021, is time barred.” May 20 Order at 30.<sup>12</sup>

14 ““[T]he statute of limitations begins to run when the plaintiff suspects or should suspect that  
 15 her injury was caused by wrongdoing, that someone has done something wrong to her.’ Aggrieved  
 16 parties generally need not know *the exact manner in which their injuries were ‘effected*, nor the  
 17 identities of all parties who may have played a role therein.”” May 20 Order at 30-31 (quoting  
 18 *Bernson*, 7 Cal.4th at 932); *accord Jolly*, 44 Cal.3d at 1111. Here, the 4AC alleges that, long before

---

19  
 20 <sup>11</sup> Plaintiff may protest that Apple could have raised this argument in its earlier motions to dismiss  
 21 (all of which were subject to this Court’s page limits, and which had to address longer complaints  
 22 with more causes of action). But that is no bar to the Court’s consideration of this argument at this  
 23 juncture; the Ninth Circuit has held that a court may exercise its discretion to consider new  
 24 arguments in a subsequent Rule 12(b)(6) motion. *See In re Apple iPhone Antitrust Litig.*, 846 F.3d  
 25 313, 319 (9th Cir. 2017); *see also Doe One v. CVS Pharmacy, Inc.*, 2022 WL 3139516, at \*6 (N.D.  
 26 Cal. Aug. 5, 2022) (holding Rule 12(g) did not bar court’s consideration of argument not raised in  
 27 first motion to dismiss in light of *In re Apple*). Indeed, it serves “the interest of judicial economy”  
 28 to consider potentially dispositive arguments based on the pleadings as part of a Rule 12(b)(6)  
 motion, rather than “requiring Defendants to bring the same argument as a Rule 12(c) motion.” *W. Digital Techs., Inc. v. Viasat, Inc.*, 2023 WL 7739816, at \*2 (N.D. Cal. Nov. 15, 2023).

<sup>12</sup> Plaintiff’s apparent claim for damage to property is also barred by the statute of limitations  
 because Plaintiff did not file a claim for nuisance (or ultrahazardous activity) until October 25,  
 2023, and Plaintiff moved out of her apartment more than three years before then. *See* First Am.  
 Compl. ¶225. Additionally, Plaintiff’s allegations that chemicals from the Scott building vented  
 through her apartment windows and “damaged” her property, including by “dissolving glues” in  
 her clothes, lack “sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
 plausible on its face.’” *Iqbal*, 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 570).

1 September 7, 2021, Plaintiff suspected her alleged injury at her apartment next to the Scott building  
 2 was caused by wrongdoing. *See* 4AC ¶¶42 (“[I]n September 2020, Gjovik’s blood and urine  
 3 medical tests returned results with industrial chemicals, including arsenic, mercury, Toluene  
 4 (Hippuric Acid), and Xylenes (2-3-4 Methyl hippuric Acid. Also noteworthy are the symptoms of  
 5 Gjovik’s 3 AM attacks, (including both subjective reporting and physical real-time heart  
 6 monitoring) match Phosphine and Arsine gas exposure.”); 57 (“On March 26, 2021, the SF Bay  
 7 View newspaper published an article Gjovik wrote about her chemical exposure experience with  
 8 the air around [the Scott building]” entitled “I thought I was dying: My apartment was built on toxic  
 9 waste.”); 59 (Plaintiff emailed US EPA and Cal EPA about issues at her apartment from September  
 10 2020 through April 2021; in April 2021, Gjovik met with Senator “Bob Weickowski” [sic] and the  
 11 “Supervising Deputy District Attorney for Environmental Crimes” regarding the alleged chemical  
 12 exposure at her apartment).<sup>13</sup>

13 The delayed discovery rule does not apply because Plaintiff (1) suspected in September  
 14 2020—over three years pre-filing—that she was being harmed by the tortious conduct of a third  
 15 party and (2) she had begun to investigate the cause. The two-year statute of limitations began to  
 16 run then. *See Greenfield MHP Assocs., L.P. v. Ametek, Inc.*, 145 F. Supp. 3d 1000, 1011 (S.D. Cal.  
 17 2015) (“[U]nder California’s approach to the delayed discovery rule … once a plaintiff possesses  
 18 information that would cause a reasonable person to inquire into the cause of their injuries [ ] they  
 19 are under an obligation to investigate the pertinent facts and the statute of limitations begins to  
 20 run”); California Civil Jury Instructions No. 455.

21 Plaintiff has failed to properly invoke the delayed discovery rule for the same reasons  
 22 discussed in Section III.B.2.b—she does not allege any facts regarding the manner of the alleged  
 23 discovery in February 2023, nor the inability to have made the discovery earlier. *See Bhinder*, 2013  
 24 WL 4010583, at \*2. To the contrary, Plaintiff specifically alleges that in September 2020 she was

---

25 <sup>13</sup> *See also id.* ¶¶31 (in February 2020, Plaintiff moved into a new apartment and quickly became  
 26 severely ill; she was screened for multiple diseases from February to September 2020 and her  
 27 “symptoms were consistent with chemical exposure”); 34 (on September 2, 2020, Plaintiff  
 28 discovered elevated levels of VOCs inside her apartment); 40 (in September 2020, Plaintiff hired  
 an industrial hygienist to test the indoor air); 72 (in April 2021, Plaintiff met with an “occupational  
 exposure doctor about her apparent chemical exposure in the apartments next to [the Scott  
 building]”).

1 aware Apple had a facility at the Scott building (4AC ¶45), and she previously alleged that in  
 2 September 2020 she was aware the Scott building “was registered with the EPA for Toxic Releases  
 3 (TRI)” (Second Am. Compl. (Dkt. 32 to 32-2) ¶184). Plaintiff may not salvage her claim by  
 4 insisting that it was not until later she came to believe that Apple was the cause of the wrongdoing  
 5 she suspected in 2020 (and wrote about in March 2021); “the general rule in California has been  
 6 that ignorance of the identity of the defendant is not essential to a claim and therefore will not toll  
 7 the statute.” *Bernson*, 7 Cal.4th at 932; *see also Norgart v. Upjohn Co.*, 21 Cal.4th 383, 399 (1999)  
 8 (“[T]he plaintiff may discover, or have reason to discover, the cause of action even if he does not  
 9 suspect, or have reason to suspect, the identity of the defendant. That is because the identity of the  
 10 defendant is not an element of any cause of action. It follows that failure to discover, or have reason  
 11 to discover, the identity of the defendant does not postpone the accrual of a cause of action ...”).

12           **4. Twelfth Claim: Plaintiff’s Ultrahazardous Claim Is Time Barred and**  
 13           **Fails to Allege Ultrahazardous Activity Under the Law.**

14 Plaintiff’s claim that certain conduct by Apple related to the Scott building is  
 15 “ultrahazardous” (such that Apple is strictly liable for any damages caused by it) fails.

16           First, it is time barred for the same reasons as the IIED and nuisance claims. *See Sections*  
 17 III.B.2.b, III.B.3; *Jolly*, 44 Cal.3d at 1111; *Bernson*, 7 Cal.4th at 932; *Greenfield MHP Assocs.,*  
 18 *L.P.*, 145 F. Supp. 3d at 1011; *Norgart*, 21 Cal.4th at 399.

19           Second, Plaintiff fails to allege facts that would support a finding that Apple conducts  
 20 ultrahazardous activities at the Scott building. This Court previously allowed Plaintiff’s  
 21 ultrahazardous claim based on the Scott building to proceed because she “made allegations that  
 22 there are chemicals used for which there is no safe level of exposure, thus implying they are  
 23 absolutely prohibited under any circumstance.” *See* May 20 Order at 29 (citing Third Am. Compl.  
 24 (Dkt. No. 47) ¶37 [alleging “[m]any of Apple’s chemicals at the plant were characterized as  
 25 ‘extremely hazardous’ or ‘acutely hazardous’ materials”]). The claim is viable to that extent and  
 26 only to that extent.” *See id.*<sup>14</sup> In the 4AC, however, Plaintiff for the first time identifies the specific

---

27           <sup>14</sup> Plaintiff amended her complaint to include new allegations that Apple violated provisions of the  
 28 Santa Clara City Code, Santa Clara County Code, and California Fire Code based on the alleged  
 location of allegedly hazardous materials. *See* 4AC ¶¶229, 230, 232, 233. These allegations are  
 outside of the narrow scope of this claim prescribed by the Court and should be rejected.

1 statutes on which she relies for the assertion that certain chemicals are “absolutely prohibited”—  
 2 yet under the plain language of those statutes, the chemicals at issue *are not* “absolutely  
 3 prohibited.” The allegations of the 4AC thus on their face do not support any claim for  
 4 ultrahazardous activity.

5 First, Plaintiff cites to Cal. Code Regs. tit. 17, §93000 (“Substances Identified as Toxic Air  
 6 Contaminants”—a regulation identifying “toxic air contaminants” under the Tanner Act—and  
 7 contends that Apple “released chemicals categorized by” that regulation as ones for which “there  
 8 is no safe level of exposure without ‘significant adverse health effects.’” 4AC ¶236. But that  
 9 regulation expressly states that, for all chemicals listed, there is *insufficient* scientific evidence to  
 10 support that there is no safe level of exposure. *See id.* (“If the Board has found that there is not  
 11 sufficient available scientific evidence to support the identification of a threshold exposure level,  
 12 the ‘Threshold’ column specifies ‘None identified’” and specifying “None Identified” for all listed  
 13 chemicals). Indeed, the Tanner Act’s purpose is to “*identif[y] and regulat[e]*” select toxic  
 14 chemicals, not “absolutely prohibit” them. *See Coal. for Reasonable Regul. of Naturally Occurring*  
*15 Substances v. Cal. Air Res. Bd.*, 122 Cal. App. 4th 1249, 1253 (2004), *as modified on denial of*  
*16 reh’g* (Oct. 29, 2004) (“The Tanner Act provides for the identification and regulation of toxic air  
 17 contaminants by airborne toxic control measures ... The Act authorizes the Board “to reduce  
 18 emissions [of toxic air contaminants] to the lowest level achievable through application of [the]  
 19 best available control technology ....’ ([Cal. Health & Safety Code] §39666, subd. (c.)”).

20 Plaintiff also cites two federal statutes, the Clean Air Act (“CAA”) and Resource  
 21 Conservation and Recovery Act (“RCRA”) and claims that Apple “violated the spirit” of these  
 22 statutes. 4AC ¶235. But neither of these statutes “absolutely prohibits” the use of certain chemicals  
 23 or substances either. Indeed, the CAA charges the Environmental Protection Agency (“EPA”) with  
 24 identifying air pollutants, establishing procedures for monitoring and measuring emissions, and  
 25 promulgating emission standards. *See* 42 U.S.C. §§7412(b)(2)-(3), (b)(5), (d). The EPA is also  
 26 responsible for regulating “extremely hazardous substances.” *See* 42 U.S.C. §7413(c)(4)-(5),  
 27 incorporating 42 U.S.C. §11002. Even use of “extremely hazardous substances” is not “absolutely  
 28 prohibited,” however; rather, the EPA is responsible for establishing “threshold planning

1 quantit[ies]" for each substance. *Id.* §11002(3).

2 Similarly, the RCRA charges the EPA with ***regulating*** facilities that generate, transport,  
 3 treat, store, or dispose of hazardous waste. 42 U.S.C. §§6921-6925. Plaintiff asserts that mere use  
 4 or disposal of hazardous substances is a *per se* violation of the RCRA, citing to 42 U.S.C.  
 5 §6928(e)—*see 4AC ¶235*—but that is not an accurate statement of law. Section 6928(e) provides  
 6 that criminal penalties may be appropriate for “export[ing] any hazardous waste identified or listed  
 7 under this subchapter … ***in violation of paragraph (1), (2), (3), (4), (5), (6), or (7) of subsection***  
 8 ***(d) of this section.***” (emphasis added). Paragraphs (d)(1)-(7) provide for criminal penalties for  
 9 failing to obtain proper permits, omitting material information or making false statements, or  
 10 transporting substances without a proper manifest, among others. Thus, mere use or disposal of  
 11 hazardous substances is not “absolutely prohibited,” contrary to Plaintiff’s suggestion.

12 Moreover, the use of the chemicals at issue are expressly governed by the state and federal  
 13 laws Plaintiff cites, and compliance with those laws determine what is and is not actionable. The  
 14 existence of regulations and statutes governing a particular activity generally mean that an activity  
 15 should not be subject to strict liability. *See Schwartzman, Inc. v. General Elec. Co.*, 848 F.Supp.  
 16 942, 945 (D.N.M. 1993) (dismissing strict liability claim and recognizing that “the premise of many  
 17 environmental laws [ ] is that proper handling and disposal of [hazardous materials] minimizes or  
 18 eliminates the risk of their use”); *Merrick Gables Ass’n, Inc. v. Town of Hempstead*, 691 F. Supp.  
 19 2d 355, 365 (E.D.N.Y. 2010) (dismissing strict liability claim relating to exposure to wireless  
 20 telephone equipment because the Federal Telecommunications Act governs the activity).

21       C.     Several of Plaintiff’s Termination-Related Claims Also Fail to State a Claim.

22       1.     Second Claim: Plaintiff’s 1102.5 Claim Should Be Dismissed in Part.

23 Labor Code section 1102.5 is California’s general whistleblower statute and prohibits  
 24 employers from retaliating against employees for engaging in “protected activity”—i.e., for  
 25 reporting conduct the employee reasonably believes violates a “state or federal statute, or a  
 26 violation of or noncompliance with a local, state, or federal rule or regulation,” or for refusing to  
 27 engage in an activity that would result in such a violation. Cal. Lab. Code §1102.5. A plaintiff  
 28 bringing a Section 1102.5(b) claim must allege both the specific rule, regulation, or statute they

1 reasonably believed has been violated, and the factual basis for their reasonable belief. *See, e.g., La  
2 v. San Mateo Cnty. Transit Dist.*, 2014 WL 4632224, at \*5 (N.D. Cal. Sept. 16, 2014); *James v. PC  
3 Matic, Inc.*, 2023 WL 4291668, at \*13-14 (C.D. Cal. May 17, 2023); *De Souza v. Dawson Tech.,  
4 Inc.*, 2022 WL 298368, at \*5 (S.D. Cal. Feb. 1, 2022); *accord* May 20 Order at 36.

5 Apple seeks to dismiss those allegations within this claim that relate to alleged complaints  
6 about “Smuggling and Violations of Sanctions.” *See* 4AC ¶168 at 50:26-28. These allegations are  
7 wholly unrelated to those alleged in the Third Amended Complaint regarding “the Gobbler  
8 application” and “environmental and safety issues,” which the Court permitted her to supplement.  
9 *See* May 20 Order at 35-36. Because Plaintiff was not granted leave to introduce new theories under  
10 Section 1102.5, such allegations should be dismissed. In any event, Plaintiff does not identify any  
11 rule, regulation or statute she reasonably believed has been violated, and thus her Section 1102.5  
12 claim, to the extent based on alleged complaints about “smuggling” or “sanctions,” fails.

13 Moreover, Plaintiff’s Section 1102.5 claim still suffers from the same defects as the Third  
14 Amended Complaint. Plaintiff continues to fail to “provide information about to whom she  
15 complained about the Gobbler application” (*see* May 20 Order at 36). Her conclusory allegation  
16 that she complained “to Apple management” (4AC ¶168 at 50:20) is insufficient. Her claim  
17 predicated on alleged complaints about the Gobbler application therefore should be dismissed.  
18 Plaintiff also continues to fail to cite “specific provisions” from many of the identified statutes, as  
19 this Court had ordered (*see* May 20 Order at 36); her undifferentiated references to alleged predicate  
20 violations of “CERCLA and implementing regulations” (4AC ¶168 at 49:17-20); “the RCRA” (*id.*  
21 at 49:21-28); “the Clean Air Act” (*id.* at 50:1-3); and “environmental crimes” (*id.* at 50:4-8 (citing  
22 entire statutory frameworks rather than specific provisions)) should be dismissed as well.

23 Additionally, the Second Claim is barred by the one-year statute of limitations to the extent  
24 that it seeks civil penalties. *See* Cal. Code Civ. Proc. §340(a); *Minor v. Fedex Off. & Print Servs.,  
25 Inc.*, 182 F. Supp. 3d 966, 988 (N.D. Cal. 2016) (explaining that if plaintiff “seeks the civil penalty  
26 provided in §1102.5(f), the claim is subject to a one-year limitations period”); *Fenters v. Yosemite  
27 Chevron*, 2009 WL 4928362, at \*7 (E.D. Cal. Dec. 14, 2009) (dismissing section 1102.5 claim as  
28 time barred). Plaintiff seeks civil penalties under Section 1102.5 (*see* 4AC at 73:21-22), but such

1 relief is barred because she did not bring the claim within one year of the alleged retaliation.

2       **2. Fourth Claim: The HSITA Claim Should Be Dismissed Because the**  
 3       **Alleged Complaints Do Not Concern “Hazardous Substances.”**

4       In the 4AC, Plaintiff seeks to add a claim for retaliation under HSITA, despite not having  
 5       been given leave to do so.<sup>15</sup> It should be dismissed for that reason alone.

6       Plaintiff fails to state a HSITA retaliation claim in any event. Labor Code section 6399.7  
 7       prohibits retaliation against any employee for filing a complaint or instituting a proceeding under  
 8       or related to HSITA. HSITA applies “to all employers who use hazardous substances” and “to  
 9       hazardous substances which are present in the workplace as a result of workplace operations[.]”  
 10      Cal. Lab. Code §6362. The “hazardous substances” covered by HSITA are those specifically listed  
 11      by the Director of Industrial Relations. *See id.* §6380; Cal. Code Regs. tit. 8, §339 (containing “the  
 12      List of Hazardous Substances prepared by the Director pursuant to Labor Code Section 6380”).

13      Plaintiff’s alleged complaints do not concern “hazardous substances” within the meaning  
 14      of HSITA. She does not allege that she complained about Apple’s “use” of any enumerated  
 15      “hazardous substances” at 825 Stewart, nor does she allege that she complained about any  
 16      enumerated “hazardous substances” “present” at 825 Stewart “as a result of workplace operations.”  
 17      To the contrary, she alleges that she was concerned about vapors that were *potentially* present at  
 18      825 Stewart *as the result of prior contamination* by prior tenants and/or owners, not current  
 19      workplace operations by Apple. *See* 4AC ¶48 (“The ‘TRW Microwave’ Superfund site is a former  
 20      industrial semiconductor fabrication and manufacturing facility at 825 Stewart Drive ... The  
 21      primary contaminants in the groundwater contamination plume are chlorinated volatile organic  
 22      compounds[.]”). Accordingly, Plaintiff has not alleged retaliation covered by HSITA.

23       **3. Fifth Claim: The Labor Code Section 98.6 Claim Fails to the Extent**  
 24       **That It Seeks Civil Penalties.**

25      The Fifth Claim is barred by the one-year statute of limitations to the extent that it seeks  
 26      civil penalties. *See* Cal. Code Civ. Proc. §340(a). Plaintiff seeks civil penalties under Section 98.6

---

27      <sup>15</sup> In her Third Amended Complaint, Plaintiff made passing reference to HSITA in paragraph 221,  
 28      part of her Section 6310 claim (the Tenth Claim in that complaint). Apple did not move to dismiss  
       that claim and Plaintiff did not seek and was not granted leave to amend it (including to split it out  
       in multiple claims including a standalone Section 6399.7 claim).

1 (see 4AC at p. 73:21-22) but such relief is barred because she did not bring the claim within one  
 2 year. *See Muniz v. United Parcel Serv., Inc.*, 731 F. Supp. 2d 961, 970 n.7 (N.D. Cal. 2010).

3           **4. Sixth Claim: The Labor Code Section 232, 232.5, 1101, and 1102 Claims**  
 4           **Fail in Part, to the Extent Premised on Alleged Statements Regarding**  
 5           **Palestinians, Muslims, and Uyghurs and Alleged Disclosures of Wages.**

6           a.       **The Section 232.5, 1101, and 1102 Claims Premised on**  
 7           **Purported Statements Regarding Palestinians, Muslims, and**  
 8           **Uyghurs (Paragraphs 183-84)**

9           For the first time, Plaintiff alleges in the 4AC—despite not receiving leave from the Court  
 10 to do so—that Apple retaliated against her in violation of California Labor Code sections 232.5,  
 11 1101, and 1102 because she “made statements to her workers [sic] about Palestinian and Muslim  
 12 human rights” and raised “concerns about a recent article that was published alleging Apple is using  
 13 Uyghur forced labor in its supply chain.” 4AC ¶183; *see also id.* ¶184 (new allegations of retaliation  
 14 for “political activities”). These new allegations and claims are improper. Upon dismissing the  
 15 Third Amended Complaint, the Court did not give Plaintiff leave to amend her Section 232.5 claim,  
 16 nor did the Court give Plaintiff leave to plead entirely new claims under Sections 1101 or 1102.  
*See* May 20 Order at 47-48. These portions of the Sixth Claim (contained in paragraphs 183 and  
 184) should be dismissed for this reason alone. *King*, 2022 WL 4629448, at \*2.

17           Plaintiff’s Section 232.5 claim premised on these purported activities fails for the additional  
 18 reason that she did not allege that she “disclose[d] information about [Apple’s] working  
 19 conditions,” as is required under the statute. Plaintiff merely alleges that she raised unspecified  
 20 concerns about “Palestinian and Muslim human rights,” which says nothing about Apple’s alleged  
 21 working conditions and does not satisfy FRCP 8. She also alleges she raised concerns about  
 22 Uyghurs based on information learned from a news article (*see* 4AC ¶183); such concerns do not  
 23 “involve information to which [Plaintiff] tends to have special access,” and thus such concerns do  
 24 not amount to a “disclosure” under relevant law. Cf. *People ex rel. Garcia-Brower v. Kolla’s, Inc.*,  
 25 14 Cal.5th 719, 726 (2023) (employee’s complaint that she had not been paid wages owed was a  
 26 disclosure protected by the Labor Code whistleblower retaliation statute, in part because the  
 27 complaint involved information to which the employee had special access).

28           Plaintiff’s Section 1101 and 1102 claims premised on the same activities fare no better. She

1 does not identify, as is required under Section 1101, “any rule, regulation, or policy” that forbade  
 2 or prevented employees from engaging or participating in politics, or that controlled or directed the  
 3 political activities or affiliations of employees. Nor does she allege, as is required under Section  
 4 1102, that Apple threatened to discharge her if she did not adopt (or if she did not refrain from  
 5 adopting) a particular course of political activity. Her Section 1101 and 1102 claims should be  
 6 dismissed. *See Brahmana v. Lembo*, 2010 WL 965296, at \*5 (N.D. Cal. Mar. 17, 2010) (dismissing  
 7 Section 1101 and 1102 claims in part due to failure to “allege the existence of any rule, regulation,  
 8 or policy forbidding [] employees from participating in politics or controlling their political  
 9 activities” or to allege “coerc[ion] by threat of discharge to adopt or refrain from adopting any  
 10 course of political activity”).<sup>16</sup>

11                   **b. The Section 232 and 232.5 Claims Premised on Alleged**  
 12                   **Disclosure of Wages (Paragraph 181)**

13 Plaintiff’s Labor Code section 232 and 232.5 claims premised on alleged disclosure of  
 14 wages fails because Plaintiff does not allege that Apple knew about the alleged social media posts  
 15 disclosing her wages that she contends prompted retaliation. *See 4AC ¶181*. To establish a *prima*  
 16 *facie* whistleblower claim under these provisions, “Plaintiff must plead a causal link between her  
 17 disclosure ... and [Apple’s] adverse actions.” *Dowell v. Contra Costa Cnty.*, 928 F. Supp. 2d 1137,  
 18 1156 (N.D. Cal. 2013). “The employer’s awareness is an *essential* component of the causal link.”  
 19 *Id.* (citing *Morgan v. Regents of Univ. of Cal.*, 88 Cal. App. 4th 52, 70 (2000)) (emphasis added).  
 20 Plaintiff does not plead facts to raise an inference that Apple knew about the alleged posts; as such,  
 21 no causal link has been pleaded and Plaintiff has failed to state a claim in paragraph 181.

22                   **5. Seventh Claim: The Section 96(k) Claim Fails Because There Is No**  
 23                   **Private Right of Action.**

24 This Court previously found the Section 96(k) allegations nested within the Section 98.6  
 25 claim in Plaintiff’s Third Amended Complaint failed because she did not allege she was terminated  
 26 for “‘lawful conduct occurring during nonworking hours away from the employer’s premises’  
 27 asserting ‘recognized constitutional rights.’” *Grinzi v. San Diego Hospice Corp.*, 120 Cal. App. 4th  
 28 72, 86 (2004) (citations omitted) (emphasis in original); *see* May 20 Order at 38. Now, Plaintiff

---

28<sup>16</sup> Apple is not moving to dismiss the portion of the Sixth Claim set forth in paragraph 182.

1 attempts to alleges a standalone Section 96(k) claim. But the cases are clear that “[s]ection 96(k)  
 2 ‘does not set forth an independent public policy that provides employees with any substantive  
 3 rights, but rather, merely establishes a procedure by which the Labor Commissioner may assert, on  
 4 behalf of employees, recognized constitutional rights.’” *Howe v. Target Corp.*, 2020 WL 5630273,  
 5 at \*11 (S.D. Cal. Sept. 21, 2020) (quoting *Grinzi*, 14 Cal. Rptr. 3d at 901); *see also Fleeman v.*  
 6 *Cnty. of Kern*, 2021 WL 663764, at \*14 (E.D. Cal. Feb. 19, 2021), *report and recommendation*  
 7 *adopted*, 2021 WL 1221469 (E.D. Cal. Mar. 31, 2021) (“Courts have established that Section 96(k)  
 8 did not create a private right of action.”) (collecting cases). Plaintiff has no Section 96(k) claim.

9           **6. Eighth Claim: The Breach of Implied Covenant Claim Should Be**  
 10           **Dismissed Because Plaintiff Does Not Identify the Contract or Plead a**  
              **Term Apple Allegedly Breached.**

11           In its ruling on Apple’s motion to dismiss Plaintiff’s implied covenant claim in the Third  
 12 Amended Complaint, this Court allowed the breach of implied covenant claim as pled to proceed.  
 13 *See* May 20 Order at 41. Plaintiff nonetheless amended her implied covenant claim despite not  
 14 having leave to do so (*compare* Third Am. Compl. (Dkt. 47) ¶¶234-37 with 4AC ¶¶189-91).<sup>17</sup> She  
 15 alleges that she was deprived of 2021 performance bonuses. *See* 4AC ¶190. Plaintiff alleges that  
 16 “Gjovik and Apple entered into an employment relationship in 2015 with a signed, written contract  
 17 and hundreds of supplemental contracts.” 4AC ¶189. She further alleges that Apple’s “policies and  
 18 communications … frequently promote … performance bonuses.” *Id.* This claim thus should be  
 19 dismissed to the extent that it relies on new theories (e.g., that Apple allegedly breached the implied  
 20 covenant underlying any of the alleged “hundreds of supplemental contracts” [*see* 4AC ¶189]).  
 21 Regardless, the amended claim is subject to dismissal for failure to allege a contract entitling her  
 22 to a performance bonus following termination.

23           “The covenant of good faith and fair dealing, implied by law in every contract, exists merely  
 24 to prevent one contracting party from unfairly frustrating the other party’s right to receive the  
 25 *benefits of the agreement actually made.*” *Guz v. Bechtel Nat’l. Inc.*, 24 Cal.4th 317, 349 (2000)

---

26           <sup>17</sup> Plaintiff was permitted to amend her breach of implied contract claim, but only if she could do  
 27 so “consistent with her Rule 11 obligations” (May 20 Order at 41); she did not amend and instead  
 28 dropped her contract claim. In other words, although she no longer alleges that Apple breach any  
              contract, she alleges that it breached a covenant implied in some such contract.

1 (emphasis in original). The covenant “cannot impose substantive duties or limits on the contracting  
 2 parties beyond those incorporated in the specific terms of their agreement.” *Id.* at 349-50; *see also*  
 3 *Peak v. TigerGraph, Inc.*, 2021 WL 4061703, at \*4-5 (N.D. Cal. Sept. 7, 2021); *Morales v. Home*  
 4 *Depot U.S.A.*, 2006 WL 8455469, at \*1 (S.D. Cal. July 18, 2006).

5 Plaintiff, however, has not identified a contract that Apple allegedly violated, nor any terms  
 6 and conditions that she now contends Apple violated by terminating her employment before she  
 7 received any performance bonus in 2021. *See* 4AC ¶190. On the contrary, she refers to her  
 8 “expectations” and Apple “promot[ing]” performance bonuses to employees, not any contract  
 9 obligating Apple to pay out such bonuses irrespective of whether an employee was terminated prior  
 10 to payment. 4AC ¶189. This is fatal to her claim. *See Pashman v. Aetna Ins. Co.*, 2014 WL 3571689,  
 11 at \*13 (N.D. Cal. July 18, 2014) (“*Guz* does not suggest that the implied covenant theory can be  
 12 stretched to cover situations where an employee is terminated, and is not able to collect  
 13 commissions that are prospective and not yet earned. . . . Indeed, to permit an implied covenant  
 14 claim on Plaintiff’s theory would be to effectively limit an employer’s right to fire an at-will  
 15 employee simply because there was an indefinite prospect of a commission in the future.”).

16 **IV. CONCLUSION**

17 Apple respectfully requests that the Court grant its Motion to Dismiss Plaintiff’s Fourth  
 18 Amended Complaint. Given the multiple opportunities Plaintiff has already been afforded to  
 19 amend, Apple requests that the Court grant its motion with prejudice and without any further  
 20 opportunity to amend and direct the parties to proceed on the termination and retaliation-related  
 21 claims that remain.

22 Dated: July 15, 2024

By: \_\_\_\_\_   
 JESSICA R. PERRY  
 Attorneys for Defendant, Apple Inc.

23  
 24  
 25  
 26  
 27  
 28